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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	
)	2:11-cr-217-LDG-CWH
Plaintiff,)	
)	
v.)	Government's Motion to Unseal
)	Portion of Trial Transcript (CR
NICHOLAS LINDSEY,)	156 at 186)
)	
Defendant.)	
_____)	

The United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and PETER S. LEVITT, Assistant United States Attorney, files this motion to unseal a portion of the transcript from the trial in the above-captioned case, as described more fully below.

On June 16, 2015, the undersigned left two messages for Lindsey's appellate attorney, William H. Gamage, Esq., to ascertain his position on this motion. As of the time of filing, the undersigned has not received a response.

CONVICTION AND APPEAL

After a jury trial in April 2013, Lindsey was convicted of nine counts of wire fraud and one count of aggravated identity theft, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 1028A(A)(1). On January 7, 2014, this Court entered judgment sentencing

1 Lindsey to 132 months' imprisonment. Clerk's Record (CR) 147. Lindsey appealed. CR
2 144.

3 In his opening brief in CA No. 14-10004, Lindsey alleged that "the trial court
4 failed to record several sidebar conferences[,] . . . [t]wo of [which] were clearly
5 important to [his] appeal rights." Dkt. 37 at 32. Referring to page 186 of the transcript
6 from the third day of trial (Apr. 3, 2013), Lindsey alleged that "[o]ne unrecorded
7 conference likely dealt with specific objections . . . regarding 'denial of Lindsey's
8 chosen defense' and the admission of expert witness testimony by unqualified
9 individuals without proper notice Substantive discussion was obviously held . . .
10 regarding these issues even though the sidebar conference was not recorded" *Id.*
11 The undersigned has been assigned to write the answering brief on appeal.

12 REQUEST FOR RELIEF

13 Despite Lindsey's claim that the foregoing portion of day three of the trial was
14 unrecorded, the transcript states: "Discussion at sidebar 2:14:15 p.m. until 2:20:30
15 p.m. Not on the record." CR 156 at 186 (cross-examination of Catherine Cosman).
16 Moreover, after receiving Lindsey's opening brief on June 2, 2015, one of the trial
17 prosecutors determined, through an exchange of e-mails with this Court's staff, that
18 this six-minute portion of the trial was recorded, but that it had been sealed.
19 Accordingly, to respond to Lindsey's appellate contention that this Court's ruling
20 "likely dealt" with the denial of his "chosen defense," the government respectfully
21 requests that this Court enter an order unsealing that portion of the transcript and
22 making it available for review.
23

1 **CONCLUSION**

2 Wherefore, for the foregoing reasons, the government respectfully requests
3 that this Court enter an order unsealing the transcript memorializing the
4 “[d]iscussion at sidebar” from “2:14:15 p.m. until 2:20:30 p.m.” on April 3, 2013. CR
5 156 at 186.

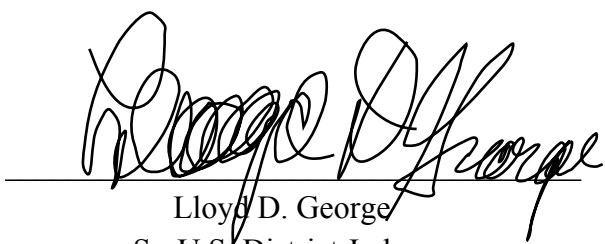
6 **DATED** this 16th day of June, 2015.

7 DANIEL G. BOGDEN
8 United States Attorney

9 s/ Peter S. Levitt
10 PETER S. LEVITT
Assistant United States Attorney

11
12
13 **ORDER**

14
15 IT IS SO ORDERED.
16 DATED this 19 day of June, 2015.

17
18 
19 Lloyd D. George
20 Sr. U.S. District Judge
21
22
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